

IN THE SUPREME COURT OF MISSOURI

CASE NO. SC 85638

**HOPE HOUSE, INC.,
Relator,**

v.

**COMMISSIONER MOLLY M. MERRIGAN,
CIRCUIT COURT OF JACKSON COUNTY, MISSOURI,
FAMILY COURT DIVISION,**

Respondent.

PETITION FOR WRIT OF PROHIBITION

BRIEF FOR RESPONDENT

Melissa A. Stanosheck, #53565
625 E. 26th Street
Kansas City, MO 64108
(816) 435-4725
Fax: (816) 435-4897
Attorney for Juvenile Officer

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JURISDICTIONAL STATEMENT

The Attorney for the Juvenile Officer concurs with Relator's jurisdictional statement in that the jurisdiction of this Court is invoked pursuant to Article 5, section 4 of the Missouri Constitution, which provides that the Supreme Court has general superintending control over all courts as well as the authority to issue and determine original remedial writs.

STATEMENT OF FACTS

On or about September 8, 2002, Maria Martinez left her minor children, Juan and Cecelia Valdez, with a caregiver at the New House domestic violence shelter and failed to return for the children. The children were placed into protective custody as Ms. Martinez's whereabouts were unknown.

The children remained in foster care until the pre-trial on October 7, 2002. During this hearing, the Court ordered that the children could return to their mother's custody so long as she remained at Rose Brooks domestic violence shelter.

On or about November 25, 2002 the Court adjudicated the Petition in this matter. At the time of the adjudication Ms. Martinez continued to reside at Rose Brooks with her children. The Court ordered that the children remain in Ms. Martinez's custody under the supervision of the Division of Family Services (DFS). Ms. Martinez was ordered by the Court to participate in counseling at Rose Brooks.

Ms. Martinez was evicted from Rose Brooks on or about November 27, 2002. Ms. Martinez did not notify the DFS social worker, Kelli Doege, to let her know of her whereabouts. Ms. Martinez and her children then moved into the New House domestic violence shelter. On or about

December 9, 2002, Ms. Doege was notified that Ms. Martinez was evicted from the New House shelter.

Ms. Martinez then moved herself and the minor children into the Hope House domestic violence shelter. She resided at this shelter with her children until January 2, 2003 when she was discharged from this facility. On January 14, 2003, the Court held a protective custody hearing with regards to the mother's living situation. The Court allowed the minor children to remain in the custody of Ms. Martinez.

Also on January 14, 2003, a subpoena duces tecum was issued ordering Hope House to appear before the Court and submit records regarding the above-mentioned minor children and their mother, Maria Martinez. This subpoena was served upon Mary Anne Metheny, a representative of the Hope House, on January 15, 2003. (Relator's Appendix, A-107) On January 24, 2003, Relator filed a Motion to Quash this subpoena. On March 25, 2003, the Juvenile Officer filed an Answer to the Motion to Quash the Subpoena. On May 15, 2003, the Juvenile Officer filed a Trial Brief regarding this issue. The Relator filed its Response Trial Brief on May 28, 2003. On June 11, 2003, Respondent denied Relator's Motion to Quash Subpoena.

On July 16, 2003, Relator filed the Petition for Writ of Prohibition with the Honorable Stephen W. Nixon in the Family Court Division of the Circuit Court of Jackson County, Missouri. On July 29, 2003, the Juvenile Officer filed the First Amended Motion to Modify disposition in this case. On August 6, 2003, the Juvenile Officer filed an Answer and Motion to Dismiss Petition for Writ of Prohibition. The Honorable Stephen Nixon denied the Petition for Writ of Prohibition. Then on September 8, 2003, Relator filed the Petition for Writ of Prohibition with the Missouri Court of Appeals, Western District. The Missouri Court of Appeals denied Relator's Petition on that same day without issuing any findings.

POINTS RELIED ON

I. Relator is not entitled to an order prohibiting Respondent from denying its Motion to Quash Subpoena because Relator will not suffer irreparable harm if it complies with Respondent's order and releases the records pursuant to the subpoena.

Cases:

1. In re State of MO., 664 F.2d 178 (8th Circuit 1981).

Statutes:

1. 42 U.S.C.A. 1064(d).
2. 28 C.F.R. 22.2.
3. 42 U.S.C.S. 290dd-2.

II. Relator is not entitled to an order prohibiting Respondent from denying its motion to quash subpoena because RSMo 210.140 abolishes the privileges and confidentiality protected by RSMo 455.220 when this communication involves cases of known or suspected child abuse.

Cases:

1. State v. Ward, 745 SW2d 666 (MO 1988).

Statutes:

1. RSMo 210.140.

2. RSMo 455.220.

III. Relator is not entitled to an order prohibiting Respondent from denying its motion to quash subpoena because the statute sections 210.011 and 210.014 RSMo are not in conflict with sections 455.220 and 455.215 RSMo and therefore the public policy of the best interests of the child should require release of the records of the Hope House.

Cases:

1. St. Louis Teachers Union Local 420 v. St. Louis Bd. Of Educ. Of City of St. Louis, 666 S.W.2d 25 (Mo.App.E.D. 1984).

2. Terminal R.R. Ass'n of St. Louis v. City of Brentwood, 230 S.W.2d 768, 360 Mo. 777 (Mo. 1950).

3. State v. Ward, 745 S.W.2d 666, 669 (Mo. 1988).

Statutes:

1. RSMo 211.011.

2. RSMo 210.140.

3. RSMo 455.220.

4. RSMo 455.215.

IV. Relator is not entitled to an order prohibiting Respondent from denying its motion to quash subpoena because the Hope House

records are relevant to the Motion to Modify filed by the Attorney for the Juvenile Officer and release of these records is necessary to ensure the safety and welfare of the children.

V. Relator is not entitled to an order prohibiting Respondent from denying its motion to quash subpoena because there is not a conflict between the federal statute relied upon by Relator and the state statute relied upon by the Juvenile Officer and therefore the doctrine of federal preemption should not apply.

Statutes:

1. 42 U.S.C.A. 1064(d).
2. 28 C.F.R. 22.2.
3. RSMo 210.140.

ARGUMENT

I. Relator is not entitled to an order prohibiting Respondent from denying its Motion to Quash Subpoena because Relator will not suffer irreparable harm if it complies with Respondent's order and releases the records pursuant to the subpoena.

Respondent agrees with Relator that a petition for a writ of prohibition is the proper means to contest the Court's order mandating that Hope House comply with the subpoena duces tecum issued in this case. However, a writ of prohibition should only be issued if it appears that a miscarriage of justice will result if the writ is not issued. In re State of Mo., 664 F.2d 178 (8th Circuit 1981). Relator has failed to show that a miscarriage of justice will result if the Court does not issue this writ.

Relator relies on 42 U.S.C.A. 1064(d) and C.F.R. 22.2(d) in support of its argument that Hope House should not be required to comply with the subpoena duces tecum. However, both of these statutes address only information kept by the domestic violence shelters for statistical purposes. Specifically, 42 U.S.C.A. 1064(d) provides that "research or statistical information" kept by recipients of victim compensation and assistance funds should be immune from legal proceedings and should not be

released without the consent of the person furnishing the information. 42 U.S.C.A. 1064(d). In 28 C.F.R. 22.2, “research or statistical information” is defined as “any information which is collected during the conduct of a research or statistical project and which is intended to be utilized for research or statistical purposes.” 22 C.F.R. 22.2.

The subpoena duces tecum issued upon Hope House on January 15, 2003 requires Hope House to turn over “any and all documentation – including dates of arrival and departures” regarding the mother and her children in the underlying case. (Relator’s Appendix, A-107) The subpoena requires Hope House to produce personal information kept regarding Ms. Martinez regarding her stay and departure from Hope House. No where in the subpoena is a request for statistical or research information.

Relator argues that all information kept regarding the mother’s stay at the Hope House and her interactions with Hope House employees is utilized in ongoing statistical analysis conducted by the organization and therefore should be deemed confidential under 42 U.S.C.A. 1064(d) and 28 C.F.R. 22.2(d). Relator further argues that it will suffer irreparable financial harm if forced to disclose this information. However, Relator fails to demonstrate that the information regarding the arrival and departure of Ms.

Martinez and her children and her daily interactions with staff are kept purely for statistical purposes. If these federal statutes are construed in this manner, no information would ever be allowed to be released from these shelters. The January 15, 2003 subpoena duces tecum does not require the release of statistical or research data. Relator fails to show how release of nonstatistical information will amount to irreparable harm.

Similarly, under 42 USCS 290dd-2, substance abuse diagnosis and treatment records are deemed confidential and are safeguarded from disclosure. However, 42 USCS 290dd-2 also provides that these records, although confidential, must be released if a court of competent jurisdiction finds good cause, including need to avert substantial risk of death or serious bodily harm, for the records to be released. 42 USCS 290dd-2(b)(c). Pursuant to this section, substance abuse treatment records are regularly released to ensure child safety in abuse and neglect proceedings.

Although the drafters of 42 USCA 1064(d) did not construct a similar provision for court ordered release of domestic violence shelter records, the statute should not be read so as to block the release of any and all records. These records are necessary to ensure the safety and well-being of the minor children, Juan and Cecelia Valdez.

Relator argues that release of this type of information would discourage battered women from seeking shelter. However, protecting the safety and well-being of children is a paramount interest which should supercede this concern. As mentioned earlier, Ms. Martinez and her minor children have resided in four domestic violence shelters since September 2002. Ms. Martinez has been evicted from each of these shelters. The minor children have remained in Ms. Martinez's custody under the supervision of DFS and have been admitted and discharged from each of these shelters with the mother. DFS has been unable to ascertain why Ms. Martinez and her children have resided in and have been evicted from the domestic violence shelters.

Presumably, the mother and her children would not be admitted to the domestic violence shelter unless she and/or the children have been victims of domestic violence. DFS has been unable to obtain any information regarding the domestic violence that the mother and/or children have been exposed to in this case. Therefore, as the supervisors of these children, DFS is unable to verify their safety. Due to the fact that these children have been in their mother's custody, the children were likely exposed to any domestic violence she may have been involved in. Thus, the children could have been at risk of direct physical harm from the

violence or indirect harm from witnessing the violence. Without the records from Hope House, the Court lacks information necessary to assure the safety and protection of the minor children regarding the reasons for the mother's acceptance and discharge from these shelters and the effect the mother's living situation has had on the physical and emotional stability of the children.

II. Relator is not entitled to an order prohibiting Respondent from denying its motion to quash subpoena because RSMo 210.140 abolishes the privileges and confidentiality protected by RSMo 455.220 when this communication involves cases of known or suspected child abuse.

RSMo 455.220 provides requirements for domestic violence shelters to qualify for funding. This statute requires that employees and volunteers of such shelters must maintain confidentiality of information identifying individuals served by the shelter and information directly related to advocacy services provided to these clients. RSMo 455.220. This statute further provides the employees and volunteers should be incompetent to testify regarding this information.

However, as Judge Nixon correctly noted in his Order denying Relator's Petition for Writ of Prohibition, the requirements of RSMo 455.220

do not apply in cases of known or suspected child abuse. Judge Nixon relied on State v. Ward. In State v. Ward, this Court specifically found that when enacting RSMo 210.140 the legislature intended to address “the serious problem of child abuse.” State v. Ward, 745 S.W.2d 666, 670 (MO 1988). Further, this Court found that the privilege at issue in State v. Ward was a statutory privilege created by the legislature which the legislature could also abolish.

Relator argues that the legislature in RSMo 455.220 did not just create a privilege, but also rendered employees and volunteers of the shelter incompetent to testify and that privilege and competency are not the same issue. However, Relator does not provide a basis for this argument.

Further, the legislature in RSMo 210.140 provided that any legally recognized privileged communication shall not apply in situations involving known or suspected child abuse and neglect and shall not constitute grounds for failure to give or accept evidence in any judicial proceeding relating to child abuse and neglect. RSMo 210.140. Therefore, RSMo 210.140 not only abolishes the legally recognized privilege granted in RSMo 455.220, but also prohibits failure to give evidence in judicial proceedings relating to child abuse and neglect. The testimony of employees and volunteers of domestic violence shelters covered by RSMo

455.220 would fall into the category of such evidence and therefore should not be protected from disclosure.

III. Relator is not entitled to an order prohibiting Respondent from denying its motion to quash subpoena because the statute sections 210.011 and 210.014 RSMo are not in conflict with sections 455.220 and 455.215 RSMo and therefore the public policy of the best interests of the child should require release of the records of the Hope House.

Relator argues that there is a conflict between RSMo 211.011 and 210.014 and RSMo 455.220 and 455.215 and therefore the rules of statutory construction should be applied. However, rules of statutory construction should be applied only when provisions of the statute are irreconcilably in conflict. St. Louis Teachers Union Local 420 v. St. Louis Bd. Of Educ. Of City of St. Louis, 666 S.W.2d 25 (Mo.App.E.D. 1984). In the instant case, the statutes are not irreconcilably in conflict. Section 210.140 RSMo recognizes the need to keep privileged communication confidential, however this statute specifically finds an exception for all privileged communication (except attorney-client and communications to clergy/ministers) when dealing with known or suspected child abuse or neglect. Section 210.140 RSMo (1998). Therefore, even though Section 455.220 RSMo requires that information provided to shelter staff be kept

confidential, this communication is not protected from disclosure under Section 210.140 RSMo.

Furthermore, “where general terms or expressions in one part of a statute are inconsistent with more specific or particular provisions in another part the particular provisions must govern, unless the statute as a whole clearly shows the contrary intention and they must be given effect notwithstanding the general provision is broad enough to include the subject to which the particular provisions relate.” Terminal R.R. Ass’n of St. Louis v. City of Brentwood, 230 S.W.2d 768, 360 Mo. 777 (Mo. 1950) (citing Jacoby v. Missouri Valley Drainage District, 349 Mo. 818, 163 S.W.2d 930, 938). Therefore, even if the language in Sections 210.140 and 455.220 are in conflict, Section 210.140 dictates because of its clear contrary intention. The language in 210.140 RSMo clearly intends to cover any privileged communication described in 455.220 RSMo.

Additionally, although Section 455.220 RSMo requires the staff of the shelters to maintain the confidentiality of information regarding clients, communication between social workers and clients is not considered legally privileged communication. State v. Ward, 745 S.W.2d 666, 669 (Mo. 1988). Therefore, the communication and records kept by the Hope House would not be otherwise protected from disclosure.

As mentioned previously, the information requested by the subpoena duces tecum is necessary to protect the safety and welfare of the Valdez children. Section 211.011 RSMo provides that the child welfare policy of the state is the best interests of the child. Section 211.011 RSMo (1998). In contrast, RSMo 455.215 and 455.220 specify requirements for domestic violence shelters to qualify for funding. RSMo 455.215 and 455.220 (2000). These requirements should not be interpreted as superceding the child welfare policy of the best interests of the child under Section 211.011 RSMo. The records maintained by the Hope House on the mother regarding her and the children's arrival and discharge from the shelter are necessary to ensure the best interests of these children and therefore release of these records pursuant to the subpoena duces tecum would comply with the public policy of the state.

The release of these records would not have to be absent safeguards. First, under Section 455.220.2 RSMo the mother could waive the confidentiality requirement in writing thereby allowing the release of the Hope House records. Section 455.220.2 RSMo (2000). In fact, the mother was asked by the Court to sign a release to facilitate the Court's access to these records and the mother refused to sign such release. Therefore the Court had to order that the records be released pursuant to the subpoena.

However, as an additional safeguard, the Court could conduct an in camera inspection of these records to ensure that the confidentiality requirements are maintained.

IV. Relator is not entitled to an order prohibiting Respondent from denying its motion to quash subpoena because the Hope House records are relevant to the Motion to Modify filed by the Attorney for the Juvenile Officer and release of these records is necessary to ensure the safety and welfare of the children.

The attorney for the Juvenile Officer in this matter filed a Motion to Modify on or about February 4, 2003 alleging that the children were in need of care and protection due to the fact that the mother was repeatedly kicked out of domestic violence shelters, including the Hope House. (Juvenile Officer's Appendix, A-48-53) This motion to modify was amended on or about July 29, 2003 to include additional allegations of the mother's involvement in a domestically violent relationship. (Juvenile Officer's Appendix, A-54-59) The records of the Hope House are directly relevant to the allegations in the Motion to Modify. The mother's admittance, stay and discharge to the shelter due to protect her from domestic violence directly effects the safety and well-being of the children placed in her custody during these events. Furthermore, these records are directly relevant to

any issue of harm that the children suffered due to the mother's admittance and discharge from this shelter.

V. Relator is not entitled to an order prohibiting Respondent from denying its motion to quash subpoena because there is not a conflict between the federal statute relied upon by Relator and the state statute relied upon by the Juvenile Officer and therefore the doctrine of federal preemption should not apply.

The federal statute of 42 U.S.C.A. 1064(d) relied upon by Relator merely applies to research or statistical information kept by domestic violence shelters. As mentioned earlier, 28 C.F.R. 22.2 defines this information as "any information which is collected during the conduct of a research or statistical project and which is intended to be utilized for research or statistical purposes." 28 C.F.R. 22.2.

Relator argues that under 42 U.S.C.A. 1064(d) the information subpoenaed from the Hope House in the January 14, 2003 subpoena duces tecum is protected as all of the Hope House's records are kept for statistical purposes. However, Relator fails to show how the information regarding the arrival and departure of Ms. Martinez and her children and her daily interactions with staff are kept purely for statistical purposes. The January 14, 2003 subpoena duces tecum does not require the release of

research or statistical information. The domestic violence shelter, Hope House, should not be able to evade the Court's subpoena powers and the discovery process by alleging that any and all information obtained and maintained by their facility is utilized in statistical research.

Therefore, because the information covered by the January 14, 2003 subpoena duces tecum has not been shown by Relator to be research or statistical data, there is not a conflict between the funding provisions of 42 U.S.C.A. 1064(d) and the disclosure requirements of RSMo 210.140. Hence, the doctrine of federal preemption need not apply.

CONCLUSION

Wherefore, the attorney for the Juvenile Officer prays for this Court to not issue a Writ of Prohibition and thereby order the release of the records subpoenaed from the Hope House.

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the above and foregoing was hand-delivered or mailed, postage pre-paid, this ____ day of December, 2003 to the foregoing:

Commissioner Molly M. Merrigan
Jackson County Circuit Court
Family Justice Center
625 E. 26th Street
Kansas City, MO 64108

Mary F. Weir
P.O. Box 520409
Independence, MO 64052
Attorney for Hope House

Renae Adamson
Office of the Guardian Ad Litem
625 E. 26th Street
Kansas City, MO 64108

Lynn Judkins
911 Main, Suite 2900
Kansas City, MO 64105-2009
Attorney for Mother

Kelli Doege
DFS

CERTIFICATION

I, Melissa A. Stanosheck, attorney for Juvenile Officer, certify that this brief includes the information required by Rule 55.03; complies with the limitations contained in Rule 84.06(b); and contains 488 lines and 3,695 words.

I further certify that the disk provided is virus-free and comports with the requirements of Rule 84.06(g).

Respectfully submitted,

Melissa A. Stanosheck, #53565
625 E. 26th Street
Kansas City, MO 64108
Phone: (816) 435-4725
Fax: (816) 435-4897
Attorney for Juvenile Officer

